



STATE OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES

25 Sigourney Street
Hartford CT 06106-5032

SN 2003(20)

SPECIAL NOTICE

Legislation Affecting Contracts With Nonresident Contractors

Purpose: This Special Notice describes legislation modifying the procedures to furnish a guarantee bond or withhold payment in connection with a contract with nonresident real property contractors.

The legislation changes the requirements for posting security to ensure a nonresident contractor pays all Connecticut taxes by requiring nonresident contractors and persons doing business with nonresident contractors to use one of two options:

1. A nonresident contractor may furnish the Department of Revenue Services (DRS) a guarantee bond for 5% of the total contract price; or
2. Persons doing business with nonresident contractors must withhold 5% of the total contract price and deposit it with DRS.

Regardless of the option chosen, the nonresident contractor must have completed and submitted to DRS **Form REG-1, Business Taxes Registration Application**, to register with DRS and has been issued a Connecticut Tax Registration Number.

Like the prior version of Conn. Gen. Stat. §12-430(7), this legislation applies to all contracts with nonresident contractors, regardless of the nature of the real property affected or the tax-exempt status of the property owner.

Effective Date: Effective for contracts entered into on and after July 1, 2003. Therefore, contracts with nonresident contractors executed on or after July 1, 2003, are subject to the rules described in this Special Notice.

Statutory Authority: 2003 Conn. Pub. Acts 147 and 2003 Conn. Pub. Acts 6, §76 (June 30 Spec. Sess.), amending Conn. Gen. Stat. §12-430(7).

Definitions:

Nonresident contractor means a contractor who does not maintain a regular place of business in Connecticut.

Regular place of business means:

- Any bona fide office, factory, warehouse, or other space in Connecticut at which a contractor is doing business in its own name in a regular and systematic manner; and
- Which place is continuously maintained, occupied, and used by the contractor in carrying on its business through its employees regularly in attendance to carry on the contractor's business in the contractor's own name.

A regular place of business **does not include:**

- A place of business for a statutory agent for service of process or a temporary office whether or not it is located at the site of construction;
- Locations used by the contractor only for the duration of the contract, such as short-term leased offices, warehouses, storage facilities, or facilities that do not have full time staff with regular business hours; or
- An office maintained, occupied, and used by a person affiliated with a contractor is not considered a regular place of business of the contractor.

Person doing business with a nonresident contractor (customer) means any person who enters a contract with a nonresident contractor, and includes, but is not limited to, property owners, governmental, charitable or religious entities, and resident or nonresident general contractors or subcontractors.

Commencement of the contract means the time when the nonresident contractor signs the contract, but, in any event, occurs no later than when the work under the contract actually starts. If a change order is made after the commencement of the original contract, the change order commences when it is signed by the nonresident

contractor, but, in any event, occurs no later than when the work under the change order actually starts.

Completion of the contract means the time when the nonresident contractor makes the final periodic billing for the contract. Note that the final periodic billing may be due before payment of any retainage becomes due. If a change order is made after the final periodic billing for the original contract, the change order is complete when the nonresident contractor bills for the change order.

Guarantee Bonds: A nonresident contractor has the option of filing a guarantee bond with DRS instead of the customer making a deposit with DRS. Under this option, the nonresident contractor has 120 days from the commencement of the contract to file a guarantee bond with DRS. DRS has issued **Form AU-766, *Guarantee Bond***, which must be used to post a bond.

If the deadline for the customer to withhold and remit a deposit to DRS is before the deadline for the nonresident contractor to post a bond, DRS will accept the earlier of the deposit or the bond.

DRS will issue a Certificate of Compliance to the nonresident contractor, which when provided by the contractor to its customer, relieves the customer of liability to withhold and remit to DRS a deposit for the amount bonded from the contractor.

Depositing a Withheld Payment: If a guarantee bond has not been posted with DRS within 120 days from the commencement of the contract, any customer of a nonresident contractor must withhold payment in an amount of 5% of the total contract price, including any change orders and charges for add-ons, and remit the amount as a deposit to DRS not later than 30 days after the completion of the contract. In no event may the deposit be made beyond two years from the later of the date the contract was signed, or work on the project commenced. With remittance of the deposit, the customer must furnish DRS with a copy of the final periodic billing (such as an invoice or AIA Document G702, *Application and Certification for Payment*, if the contractor uses it), or billing to-date if the deposit is made within two years of commencement of the contract. The customer must use **Form AU-764, *Deposit by a Person Doing Business with a Nonresident Contractor***, to make a deposit.

The deposit must be made for each contract the customer enters with a nonresident contractor. For example, a general contractor doing business with a number of nonresident contractors may not combine

the deposits into a single one, but instead must remit a separate deposit on behalf of each nonresident contractor. To ensure the proper administration of Conn. Gen. Stat. §12-430(7), DRS may require any customer of a contractor to provide a list of all contractors with which they are doing business.

If the parties institute a change order after the final periodic billing for the contract, the customer must deposit an additional 5% of the amount for the change order with DRS not later than 30 days after the change order is completed. In no event may the deposit be made beyond two years from the later of the date the change order was signed, or work on the change order commenced. A copy of the final billing for the change order must accompany the deposit.

The legislation removes the 2% bond rate for holders of direct payment permits, who must now withhold 5% of the contract price and remit it to DRS. The direct payment permit holder must continue to self-assess use tax on all materials and supplies installed or permanently placed in a renovation construction project, and on the renovation labor for the project. See **Informational Publication 2001(7), *Q & A on the Connecticut Direct Payment Permit Program***.

When a customer of a nonresident contractor deposits a withheld amount with DRS, DRS will issue that person a receipt for the amount. Upon issuance of a receipt, the customer is not liable for any claim of the nonresident contractor for the amount or for any claim of DRS for any taxes arising from the activities of the nonresident contractor on the project for which the bond deposit was made, subject to verification of the final total contract price, the timeliness of the deposit, and that all deposits made by the customer total 5% of the final total contract price.

The amount withheld from the nonresident contractor is a special fund in trust for the State of Connecticut. If the customer fails to make a timely deposit of the withheld amount, the customer will be jointly and severally liable for any taxes due the State of Connecticut arising from the contract with the nonresident contractor and may face civil or criminal prosecution, or both. For example, if the customer remits the withheld amount to DRS after the 30-day time limit, DRS will issue a receipt and the nonresident contractor may request a return of the deposit, but the customer remains liable for any unsatisfied Connecticut tax liability of the nonresident contractor arising from the project for which the deposit was made. The nonresident contractor's tax liability includes sales and use taxes, withholding tax,

personal income tax, corporation business tax, motor fuels tax, business entity tax, and any other applicable Connecticut taxes arising from the project for which the deposit was made. A customer that fails to withhold and timely remit a deposit may be held responsible for any liability related to these taxes, which may exceed 5% of the total contract price.

Release of Bond or Claim for Deposited Amount by Nonresident Contractor: A nonresident contractor must request, in writing, that DRS audit the records of the contractor for a project for which a bond was filed with DRS or an amount was withheld and deposited. The nonresident contractor must have filed all Connecticut tax returns due during the term of the contract, and must have all applicable records available for inspection by DRS. DRS must receive the request for the bond release or withheld amount within three years from the last day of the month succeeding the period in which the nonresident contractor filed a bond or the customer must pay the withheld amount to DRS, as the case may be. To determine whether the deposit may be returned to the nonresident contractor, the statute of limitations for any returns due from the contractor during the term of the contract remains open.

DRS will, after receiving a written request, issue to the nonresident contractor either a Certificate of No Tax Due or a Certificate of Tax Due.

Upon issuance of a Certificate of No Tax Due, DRS will release the bond or return the deposited amount to the nonresident contractor, as the case may be. Upon issuance of a Certificate of Tax Due, DRS may pay to the nonresident contractor out of the deposit any excess over the amount of taxes set forth in the certificate or otherwise owed to the State of Connecticut, together with the interest and penalties then assessed. Where a bond was posted and the nonresident contractor is found to be liable for unpaid Connecticut taxes after the contractor's appeal rights have been exhausted, DRS may call the bond.

Effect on Other Documents: This Special Notice modifies and supersedes **Informational Publication 99(19), *Building Contractors' Guide to Sales and Use Taxes***, to the extent it discusses contractor bonds. In addition, **Form AU-72, *Cash Bond***, and **Form AU-70,**

Guarantee Bond, will no longer be used for contracts entered into on and after July 1, 2003.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in State or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Forms and publications are available anytime by:

- **Internet:** Preview and download forms and publications from the DRS Web site at **www.ct.gov/DRS**
 - **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
 - **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.
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Paperless Filing Methods (fast, easy, free, and confidential):

- **For business returns:** Use ***Fast-File*** to file sales and use taxes, business use tax, room occupancy tax, or withholding tax returns over the Internet or telephone. Visit the DRS Web site at **www.ct.gov/DRS** and click on ***File Returns On-Line*** or call **860-947-1988**.
 - **For resident income tax returns:** Use ***WebFile*** to file personal income tax returns over the Internet. Visit the DRS Web site at **www.ct.gov/DRS** and click on ***File Returns On-Line***.
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